

Code of New Mexico Rules <small>Currentness</small>

Title 8. Social Services

Chapter 11. Adult Protective Services

Part 3. Adult Protective Services Investigations (Refs & Annos)

N.M. Admin. Code 8.11.3
8.11.3. ADULT PROTECTIVE SERVICES INVESTIGATIONS

8.11.3.1 ISSUING AGENCY: Aging and Long-Term Services Department - Adult Protective Services Division.

[8.11.3.1 NMAC - Rp, 8.11.3.1 NMAC, 6/1/2010]

8.11.3.2 SCOPE: Adult protective services employees and the general public.

[8.11.3.2 NMAC - Rp, 8.11.3.2 NMAC, 6/1/2010]

8.11.3.3 STATUTORY AUTHORITY: Adult Protective Services Act, [Section 27-7-1 et seq. NMSA 1978](#), as amended; Public Health Act, Section 24-1-5L, as amended; Employee Abuse Registry Act, [Section 27-7A-1 et seq. NMSA 2005](#); Uniform Health-Care Decisions Act, [Section 27-7A-1 et seq. NMSA 1995](#), as amended; Residential Abuse and Neglect Act, [Section 30-47-1 et seq. NMSA 1990](#), as amended; Aging and Long-Term Services Department Act, Section 9-23-1 et seq.

[8.11.3.3 NMAC - Rp, 8.11.3.3 NMAC, 6/1/2010]

Credits

8.11.3.4 DURATION: Permanent.

[8.11.3.4 NMAC - Rp, 8.11.3.4 NMAC, 6/1/2010]

8.11.3.5 EFFECTIVE DATE: June 1, 2010, unless a later date is cited at the end of a section.

[8.11.3.5 NMAC - Rp, 8.11.3.5 NMAC, 6/1/2010]

8.11.3.6 OBJECTIVE: To establish guidelines for the provision of adult protective services investigations.

[8.11.3.6 NMAC - Rp, 8.11.3.6 NMAC, 6/1/2010]

8.11.3.7 DEFINITIONS:

A. “Ability to consent” means an adult’s ability to understand and appreciate the nature and consequences of proposed protective services or protective placement, including benefits, risks and alternatives to the proposed services or placement and to make or communicate an informed decision.

B. “Abuse” means:

(1) knowingly, intentionally or negligently and without justifiable cause, inflicting physical pain, injury or mental anguish;

(2) the intentional deprivation by a caregiver or person of the services necessary to maintain the mental and physical health of an adult;

(3) sexual abuse including criminal sexual contact, incest and criminal sexual penetration.

C. “Administrative review” means a review of the department’s records of a substantiated case for abuse, neglect or exploitation by the division director or the director’s designee to determine if the notification process was performed and if the standard of preponderance of evidence was met in substantiating the allegation(s). An administrative review is not an administrative hearing before a hearing officer.

D. “Adult protective services (APS) attorney” is the attorney that represents the department in actions pursuant to the Adult Protective Services Act and federal and state constitutional, statutory and case law.

E. “Aggrieved person” means a person against whom a substantiation of abuse, neglect or exploitation has been substantiated. This does not include self neglect.

F. “Appropriate referral” is a report of adult abuse, neglect or exploitation received by the department which falls within the department’s mandate to investigate.

G. “Assessment” means a process of completing structured and non-structured interviews to acquire an understanding of an adult’s situation to determine if immediate protection or placement may be required.

H. “Care facility” means a hospital; skilled nursing facility; intermediate care facility; care facility for the mentally retarded; psychiatric facility; rehabilitation facility; kidney disease treatment center; home health agency; ambulatory

surgical or outpatient facility; home for the aged or disabled; group home; adult foster care home; private residence that provides personal care; sheltered care or nursing care for one or more persons; adult day care center; boarding home; adult residential shelter care home; and any other health or resident care related facility or home but does not include a care facility located at or performing services for any correctional facility.

I. “Caretaker” means a facility, provider or individual that has assumed the responsibility for the care of an adult.

J. “Case disposition” means, upon completion of an investigation, whether to provide protective services for the purpose of alleviating or preventing further adult abuse, neglect or exploitation and ongoing risk to the incapacitated adult.

K. “Decisional capacity” means an adult’s ability to understand and appreciate the nature and consequences of proposed protective services or protective placement, including benefits, risks and alternatives to the proposed services or placement and to make or communicate an informed decision.

L. “Department” is the aging and long-term services department.

M. “Emergency” means an adult is living in conditions that present a substantial risk of death or immediate and serious physical harm to the adult or others.

N. “Exploitation” means an unjust or improper use of an adult’s resources for another’s profit or advantage, pecuniary or otherwise.

O. “Incapacitated adult” means any adult with a mental, physical or developmental condition that substantially impairs the adult’s ability to provide adequately for the adult’s own care or protection.

P. “Investigation” means a systematic fact finding process, initiated within a prescribe timeframe, with the goal of gathering all information relevant to the making of a determination as to whether the alleged maltreatment occurred and assess whether the incapacitated adult remains at risk, has decisional capacity and if protective services are necessary to remediate risk.

Q. “Investigation determination” means whether adult abuse, neglect or exploitation is substantiated or unsubstantiated.

R. “Neglect” means the failure of the caretaker of an adult to provide for the basic needs of the adult such as clothing, food, shelter, supervision and care for the physical and mental health for that adult. Neglect includes self neglect.

S. “Orientation” means the degree to which a person is cognizant of the:

(1) “time” of day, date, month and year;

(2) “place” meaning that the adult knows where he is;

(3) “person” meaning that the adult knows who he is and who other people are;

(4) “purpose” means that the adult knows the reason for the visit from the APS worker.

T. “Preponderance of evidence” means the general standard of proof in civil cases. To support the finding, 51 percent or more of the relevant collected evidence must support that finding, determining it to be more likely than not.

U. “Protected adult” means an adult for whom a guardian or conservator has been appointed or other protective order has been made or an abused, neglected or exploited adult who has consented to protective services or protective placement.

V. “Reporting person” means a person who makes a referral to adult protective services staff about a situation of alleged abuse, neglect or exploitation of an elderly person or an adult with a disability.

W. “Self neglect” means an act or omission by an incapacitated adult that results in the deprivation of essential services or supports necessary to maintain the incapacitated adult’s minimal mental, emotional or physical health and safety.

X. “Severity standard” means the determination of the severity of the substantiated complaint of abuse, neglect or exploitation for non-licensed health professionals based on the application of the severity standards in section 8.11.6 NMAC, Adult Protective Services Employee Abuse Registry.

Y. “Staffing” means conferences to internally review investigation progress and timelines, service needs and plans for the completion of the investigation.

Z. “Substantiation” means a determination, based upon a preponderance of collected and assessed credible information, that the abuse, neglect or exploitation of an incapacitated adult has occurred.

AA. “Substantiated registry referral” means a substantiated complaint that satisfies the severity standard for referral of the employee to the registry.

BB. “Unlicensed facility” means a facility, such as an assisted living home, which operates without a license from the department of health.

CC. “Unsubstantiated” means that the information collected during the investigation does not support a finding that the vulnerable adult was abused, neglected or exploited.

[8.11.3.7 NMAC - Rp, 8.11.3.7 NMAC, 6/1/2010]

8.11.3.8 PURPOSE OF ADULT PROTECTIVE SERVICES INVESTIGATION: The adult protective services investigation collects and assesses information related to the following:

- A. whether the incident(s) of adult abuse, neglect or exploitation more likely than not occurred;
- B. whether the adult remains at risk for continuing abuse, neglect or exploitation;
- C. the need for additional protective services; and
- D. the need for coordination of appropriate and available short-term services for incapacitated adults who have suffered abuse, neglect or exploitation.

[8.11.3.8 NMAC - Rp, 8.11.3.8 NMAC, 6/1/2010]

8.11.3.9 ELIGIBILITY: The department shall investigate allegations of abuse, neglect or exploitation of incapacitated adults by an individual, program or care facility without regard to family income. Services provided by adult protective services are intended for incapacitated adults. Only citizens and legal residents are eligible for services beyond an investigation or emergency services. Homelessness, in and of itself, does not constitute abuse, neglect or exploitation.

[8.11.3.9 NMAC - Rp, 8.11.3.9 NMAC, 6/1/2010]

8.11.3.10 RIGHT TO REFUSE AN INVESTIGATION: An investigation may be terminated at the request of the referred adult after a determination is made by the adult protective services investigator, in consultation with the adult protective services supervisor, that the alleged victim appears to have the “ability to consent” and therefore, is able to refuse an investigation.

[8.11.3.10 NMAC - Rp, 8.11.3.10 NMAC, 6/1/2010]

8.11.3.11 PROVISION OF SERVICES DURING THE INVESTIGATION: If, during the course of an investigation, the department determines that an adult who is incapacitated is in need of services, the department may provide short-term services using the least restrictive intervention necessary, with the consent of the person or surrogate decision maker or pursuant to a court order.

[8.11.3.11 NMAC - Rp, 8.11.3.11 NMAC, 6/1/2010]

8.11.3.12 INTAKE AND ASSIGNMENT: The department is responsible for providing the public the means for making referrals at all times. Every appropriate referral is assigned to an adult protective services investigator for investigation in a reasonable timeframe determined by the department. Upon receipt of a referral alleging abuse, neglect or exploitation of an adult in a care facility, the department notifies any of the state agencies which hold an interest in the licensing, certification or monitoring of the care facility.

[8.11.3.12 NMAC - Rp, 8.11.3.12 NMAC, 6/1/2010]

8.11.3.13 INITIATING, INVESTIGATING, ASSESSING, DOCUMENTING, SERVICE PLANNING, STAFFING AND MAKING A DETERMINATION: In accordance with department procedures, every case accepted by adult protective services shall be initiated, investigated, assessed, documented and staffed pursuant to this part. A determination of “substantiated” or “unsubstantiated” shall be made and, when appropriate, services will be offered to the incapacitated adult.

A. The department proceeds as follows:

- (1) the department visits the residence of the referred adult(s) when investigating alleged abuse, neglect or exploitation;
- (2) the department cannot enter a home without the permission of the resident;
- (3) if the department is denied access to the home of an alleged victim, law enforcement or the adult protective services attorney may be contacted to assist in gaining access pursuant to APS Act 27-7-19.D NMSA 1978.

B. Anyone willfully interfering with an investigation of adult abuse, neglect or exploitation is guilty of a misdemeanor and subject to a civil penalty of not more than \$10,000 per violation pursuant to APS Act 27-7-19.F.NMSA 1978.

C. The department conducts interviews with those individual(s) who potentially have knowledge of the alleged abuse, neglect or exploitation.

D. The department provides the following information to individuals being interviewed:

- (1) the purpose of the department’s contact;
- (2) if the person being interviewed is alleged to be the victim or perpetrator;
- (3) the department’s intent to maintain confidentiality except when it becomes necessary to inform or collaborate with

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the district attorney, courts, law enforcement officials or other appropriate agencies in accordance with the Adult Protective Services or Resident Abuse and Neglect Acts and other statutes; and

(4) their right to refuse to participate in the investigation.

E. The department establishes reasonable timeframes to complete investigations and collects evidence, records observations and other information that may be used in substantiating or un-substantiating the allegations in the report.

F. The department has the authority to intervene, when necessary, including emergency removal, initiating court petitions and providing short-term services when funds are available.

G. The department creates documentation on each case, staffs each case with an adult protective services supervisor and, when appropriate, creates a service plan.

H. The department uses a preponderance of evidence to make a determination in every case and substantiates or un-substantiates every allegation.

I. The department will notify the alleged perpetrator(s) of the determination of the case by mail. In the event the allegation is substantiated, the perpetrator may request an administrative review of the case within 10 days of the receipt of the letter in accordance with this part. Based upon the facts and circumstances of the investigation, the department need not send a letter in all cases of substantiated self neglect.

[8.11.3.13 NMAC - Rp, 8.11.3.13 NMAC, 6/1/2010]

8.11.3.14 CONFIDENTIALITY OF INVESTIGATION RECORDS: Investigations completed by the department are confidential and are only released as allowed for by NMSA 1978 section 27-7-9. The department cooperates with the domestic violence homicide review team through the New Mexico Crime Reparations Act to the extent allowed by law. During an emergency, the department may release limited information, on a need to know basis, as allowed by law.

[8.11.3.14 NMAC - Rp, 8.11.3.20 NMAC, 6/1/2010]

8.11.3.15 NOTIFICATION OF AND THE RESULTS OF AN INVESTIGATION:

A. The department shall notify the alleged victim and the alleged perpetrator that an investigation has been initiated and that notification shall be documented in the case notes. The department has the option of notifying the reporting person if the case has been accepted or not accepted for investigation.

B. Unless otherwise provided for in this section, the department shall notify the alleged victim and perpetrator.

C. The department shall notify the perpetrator in writing of the department's substantiation of abuse, neglect or exploitation, the legal and factual basis for the substantiation and the aggrieved person's right to appeal the substantiation in accordance with 8.11.1.17.NMAC.

[8.11.3.15 NMAC - Rp, 8.11.3.21 NMAC, 6/1/2010]

8.11.3.16 ADMINISTRATIVE REVIEW:

A. An aggrieved person may request an administrative review of a decision made by the division regarding a substantiation of abuse, neglect or exploitation in accordance with the provisions set forth in this section. Administrative reviews are not available on any action that is currently or was previously the subject of a lawsuit.

B. Requests for administrative reviews must be made in writing to the adult protective services division director within ten calendar days of receipt of the letter of substantiation. The division director or their designee, may reverse the substantiation any time before the scheduled review.

C. Notification of substantiation, request for administrative reviews and administrative review process.

(1) Requests for administrative reviews must be made in writing to the adult protective services division director within ten calendar days of the receipt of the letter of substantiation. The division director or their designee may reverse the substantiation anytime before the scheduled review.

(2) Within 30 days of the receipt of the request for administrative review, the division notifies the aggrieved person requesting the administrative review of the time and date of the review, which may be no later than 60 days from the date of the request.

(3) The person conducting the review shall be neutral and have no direct involvement with the investigation or substantiation.

(4) The person conducting the administrative review issues a written decision within 30 days of the review, giving the reasons why the substantiation, by preponderance of evidence, is substantiated or reversed. The written decision is mailed to the aggrieved party and placed in the case record.

(5) The decision by the person conducting the administrative review is final and non-appealable except as otherwise provided for by the law.

[8.11.3.16 NMAC - N, 6/1/2010]

8.11.3.17 EMPLOYEE ABUSE REGISTRY: The department abides by all the terms of the aging and long-term services department Employee Abuse Registry, [8.11.6 NMAC](#) and the department of health Employee Abuse Registry [7.1.12 NMAC](#).

[8.11.3.17 NMAC - N, 6/1/2010]

HISTORY OF 8.11.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives under:

SSD 10.0.0, Social Services - Definition and Goal Statement, filed 8/22/86.

SSD 10.0.0, Social Services - Definition and Goal Statement, filed 6/18/87.

SSD 10.0.0, Social Services - Definition and Goal Statement, filed 9/18/90.

SSD 10.1.0, Social Services for Adults - General Provisions, filed 8/22/86.

SSD 10.1.0, Social Services for Adults - General Provisions, filed 1/29/87.

SSD 10.1.0, Social Services for Adults - General Provisions, filed 6/18/87.

SSD 10.1.0, Social Services for Adults - General Provisions, filed 9/18/90.

SSD 10.2.0, Social Services for Adults - General Guidelines, filed 8/22/86.

SSD 10.2.0, Social Services for Adults - General Guidelines, filed 9/18/90.

History of Repealed Material:

8.11.3 NMAC, Adult Protective Services Investigations (filed 4/14/03) repealed 6/1/2010.

Other History:

SSD 10.2.0, Social Services for Adults - General Guidelines (filed 9/18/90) was renumbered, reformatted, amended and replaced by 8.11.3 NMAC, Adult Protective Services Investigations, effective 4/30/03.

8.11.3 NMAC, Adult Protective Services Investigations (filed 4/14/03) was replaced by 8.11.3 NMAC, Adult Protective Services Investigations, effective 6/1/2010.

Current with all new rules, amendments, and repeals received by January 2, 2017

N.M. Admin. Code 8.11.3, NM ADC 8.11.3

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Title 8. Social Services

Chapter 11. Adult Protective Services

Part 4. Adult Services (Refs & Annos)

N.M. Admin. Code 8.11.4
8.11.4. ADULT SERVICES

8.11.4.1 ISSUING AGENCY: Aging and Long-Term Services Department - Adult Protective Services Division.

[8.11.4.1 NMAC - Rp, 8.11.4.1 NMAC, 3/1/2012]

8.11.4.2 SCOPE: Protective services employees and contract providers and the general public.

[8.11.4.2 NMAC - Rp, 8.11.4.2 NMAC, 3/1/2012]

8.11.4.3 STATUTORY AUTHORITY: Adult Protective Services Act, [Section 27-7-15 et seq. NMSA 1978](#), as amended; Public Health Act, Section 24-1-5L NMSA 1978, as amended; Probate Code, [Section 45-5-301 et seq. NMSA 1978](#), as amended; Resident Abuse and Neglect Act, [Section 30-47-1 et seq. NMSA 1978](#), as amended, and State Agency on Aging, [Section 28-4-6 NMSA](#), as amended.

[8.11.4.3 NMAC - Rp, 8.11.4.3 NMAC, 3/1/2012]

Credits

8.11.4.4 DURATION: Permanent.

[8.11.4.4 NMAC - Rp, 8.11.4.4 NMAC, 3/1/2012]

8.11.4.5 EFFECTIVE DATE: March 1, 2012, unless a later date is cited at the end of a section.

[8.11.4.5 NMAC - Rp, 8.11.4.5 NMAC, 3/1/2012]

8.11.4.6 OBJECTIVE: To establish guidelines for the provision of adult services by the department that are consistent with statutory authority and legal mandates.

[8.11.4.6 NMAC - Rp, 8.11.4.6 NMAC, 3/1/2012]

8.11.4.7 DEFINITIONS:

A. “Ability to consent” means an adult’s ability to understand and appreciate the nature and consequences of the proposed protective services or protective placement, including the benefits, risks and alternatives to the proposed services or placement and to make or communicate an informed decision.

B. “Administrative hearing” is a formal process whereby a client receiving adult services can appeal a decision made by the department to modify or terminate services prior to the service plan’s expiration date.

C. “Administrative review” is an informal process, which may include an informal conference or may include only a review of the existing file. The administrative review does not create any substantive rights for the client.

D. “Adult day care” is the provision of contractual day care services for functionally impaired adults who have been abused, neglected or exploited or are at continued risk of being abused, neglected or exploited. Services are delivered in a licensed facility that provides structure and supervision.

E. “Aggrieved person” is someone who has been determined by the department to be abused, neglected or exploited and who has had his or her adult service plan for attendant care, home care or day care denied, modified or terminated.

F. “Assessment” is a process of completing structured and non structured interviews to acquire an understanding of multiple levels of the adult’s need and developing interventions within available resources, if appropriate.

G. “Attendant care” is the provision of temporary, non-medical personal care to a functionally impaired adult in his or her own home by a caregiver when no other service options exist.

H. “Eligibility” means the adult meets necessary criteria for adult services under this part.

I. “Emergency shelter/caregiver” is the placement of an adult in an appropriate facility or the use of a caregiver in the adult’s home to provide a temporary protected environment.

J. “Functional impairment” is the inability of an adult to perform independently some or most activities of daily living or instrumental activities of daily living.

K. “Home care services” are the provision of direct or contractual non-medical personal care and light housekeeping

services for adults who have physical or mental disabilities that cause a functional disability to meet their basic care or home maintenance needs and who otherwise meet the criteria established in these regulations.

L. “Incapacitated person” means any adult with a mental, physical, or developmental condition that substantially impairs the adult’s ability to provide adequately for the adult’s own care or protection.

M. “Secretary” is the secretary of the aging and long-term services department or the secretary’s designee within the ALTSD.

N. “Service plan” a written, individualized plan defining specific services for a client in a specific timeframe.

[8.11.4.7 NMAC - Rp, 8.11.4.7 NMAC, 3/1/2012]

8.11.4.8 PURPOSE OF ADULT SERVICES: The purpose of adult services is to mitigate adult abuse, neglect and exploitation, to prevent inappropriate or premature institutionalization and to assist clients to remain safely in their home or the least restrictive environment possible.

[8.11.4.8 NMAC - Rp, 8.11.4.8 NMAC, 3/1/2012]

8.11.4.9 TYPES OF ADULT SERVICES: The department, based upon the adult’s eligibility and the availability of resources, provides or arranges for the following services for adults:

A. emergency caregiver/shelter care services;

B. home care services;

C. attendant care services; and

D. adult day care.

[8.11.4.9 NMAC - Rp, 8.11.4.9 NMAC, 3/1/2012]

8.11.4.10 GENERAL PROVISIONS:

A. Any adult who is not determined to be decisionally incapacitated may refuse services.

B. The department determines eligibility for specific services based on client need, client income and the availability of resources and available funding for each type of service under this part.

(1) The department assesses and determines the adult's need for services.

(2) Adults who have been determined through a department investigation to have been abused, neglected or exploited and are assessed to continue to be at risk may be eligible to receive services on a short term basis without regard to income, as determined necessary by the department.

(3) Except for emergency shelter/caregiver services, the department utilizes the institutional medicaid income criteria for the determination of financial eligibility for services.

C. The department completes a recertification of income for adult services eligibility on an annual basis.

D. Any denial, modification or termination of adult services may be reviewed by the department pursuant to the administrative review process described in this part.

E. The department coordinates its adult protective services in order to ensure that there is no duplication of like services for the same hours of the same day.

F. Clients receiving APS adult services have the following responsibilities:

(1) assisting with applying for waiver services eligibility, including medicaid and financial eligibility;

(2) reporting on whether he or she needs help; and

(3) appropriately using services paid by state funds.

G. Clients may be terminated from APS services for the following reasons:

(1) moving out of the program service area;

(2) consistently not complying with the service plan and is a person with decision-making capacity;

- (3) consistently refusing service or not allowing the agency to enter the home to provide services;
- (4) posing a significant risk to self or others;
- (5) demonstrating a pattern of verbal or physical abuse of attendants or agency personnel, i.e., use of vulgar or explicit language, verbal or physical sexual harassment, excessive use of force, verbal or physically intimidating threats, and illegal use of narcotics or alcohol abuse;
- (6) refusing to provide accurate financial information, providing false information or illegally transferring assets to receive services under this part;
- (7) ceasing to meet the financial or non-financial criteria; or
- (8) ceasing to meet the level of care criteria.

[8.11.4.10 NMAC - Rp, 8.11.4.10 NMAC, 3/1/2012]

8.11.4.11 CASE MANAGEMENT:

- A. The department provides short term case management of adult services.
- B. The department conducts, and documents, at least quarterly, face-to-face visits with adults receiving home and attendant care services.
- C. The department utilizes staffings and supervisory conferences to develop and review plans and to determine the need for continuation of services for each adult receiving services.

[8.11.4.11 NMAC - Rp, 8.11.4.11 NMAC, 3/1/2012]

8.11.4.12 SERVICE PLAN:

- A. The department develops a written individualized service plan for each adult receiving services.
- B. The department develops a service plan within 30 days of the dispositional staffing in which an APS supervisor and

worker discuss the applicability of adult services to the client.

C. The department reassesses the service plan and the need for ongoing services within a minimum of 90 days after services commence.

[8.11.4.12 NMAC - Rp, 8.11.4.12 NMAC, 3/1/2012]

8.11.4.13 EMERGENCY SHELTER/CAREGIVER SERVICES:

A. Any adult who has been or is at continued risk of being abused, neglected or exploited may be eligible to receive emergency shelter/caregiver services if he or she requires a protected environment to maintain health and safety.

(1) Emergency shelter/caregiver services are provided without regard to income.

(2) Emergency shelter/caregiver services are utilized only in emergency situations and are temporary until a permanent safe environment can be located.

B. The adult may select his or her caregiver if the caregiver is a capable adult approved by the department prior to commencement of services.

C. The department may provide emergency shelter/caregiver services not exceeding 30 days unless an exception is approved by the department in writing for a specified longer period of time.

D. Placement is provided in the adult's home or an appropriate licensed facility or safe environment. Placement in a correctional facility is not permitted.

E. When the department enters into a written agreement with the facility or caregiver the agreement will include:

(1) the services to be provided;

(2) the rate of payment for the services; and

(3) the time frame that the service will be provided.

F. The department provides payment for placements based on the rate normally charged by the facility not to exceed the medicaid rate.

G. The department provides payment for caregivers at a predetermined rate.

H. The department places individuals pursuant to the Adult Protective Services Act.

[8.11.4.13 NMAC - Rp, 8.11.4.13 NMAC, 3/1/2012]

8.11.4.14 HOME CARE SERVICES:

A. Home care services may be provided or terminated by the department as resources and funding allows.

B. Any incapacitated adult who is substantiated for abuse, neglect or exploitation may be eligible for home care. On occasion, an incapacitated adult, who is not substantiated for abuse, neglect or exploitation, may be considered for home care services if the department determines that the adult remains at imminent risk of abuse, neglect or exploitation. The following criteria apply to adults considered for home care:

(1) the adult must meet institutional care medicaid eligibility; and

(2) the adult must have a documented medical incapacity that limits their activities of daily living and their ability to provide their own care at home.

C. The department, at its discretion, may provide home care by the department staff or through agencies under contract to the department.

D. Adults receiving home care through adult protective services shall apply for long term care services through the appropriate medicaid programs or waiver program and, when approved to receive medicaid or waiver services, the adult must transition to the waiver service and discontinue home care through adult protective services. Adult protective services will discontinue its home care when the client is approved to receive medicaid or waiver home care.

[8.11.4.14 NMAC - Rp, 8.11.4.14 NMAC, 3/1/2012]

8.11.4.15 ATTENDANT CARE SERVICES:

A. Attendant care may be provided by the department as resources and funding allows.

B. Attendant care is non-medical personal care provided to a functionally impaired adult in their own home by a caregiver. An adult who is substantiated for or is at imminent risk of abuse, neglect or exploitation may be eligible for attendant care if no other care options exist and if attendant care will reduce the likelihood of the adult being admitted to a nursing home.

(1) The adult must meet institutional care medicaid eligibility.

(2) The adult must have a documented medical incapacity that significantly limits their activities of daily living and their ability to provide all of their own care at home.

C. Attendant care services are considered a temporary intervention and shall be discontinued when long-term services become available.

D. Adults receiving attendant care shall apply for long-term care services through the appropriate medicaid or waiver and, when approved to receive those services, the adult must transition to the medicaid or waiver service and discontinue attendant care through adult protective services. Adult protective services can discontinue its attendant care when the client begins receiving medicaid waiver attendant care.

E. The department may provide attendant care services based upon its assessment of need. The adult seeking attendant care services provides a medical report to the department documenting the client's medical condition and supporting the need for attendant care services.

F. The department approves the number of hours of service based upon the department adult protective service worker's assessment of the needs of the adult, the level of care criteria and the availability of funding.

G. Services are provided by individuals chosen and approved by the client and who are not department employees.

(1) The department requires a criminal background check on all attendant care providers as required by law; a review of any substantiations of abuse, neglect or exploitation; and a review of the employee abuse registry.

(2) Individuals selected by the recipient of attendance care services shall meet the following criteria established by the department:

(a) have the physical ability to provide the services;

(b) be age 18 or older;

(c) is not currently listed on the employee abused registry; and

(d) have been determined by APS, after consideration of the facts and circumstances, to be a safe and appropriate caregiver.

H. The department enters into a written agreement with the adult and the attendant care provider which specifies the following:

(1) the services provided by the attendant;

(2) the adult's/family's responsibilities;

(3) the time frames for the provision of the service; and

(4) that the failure of the attendant care provider to comply with the agreement will result in the termination of services or replacement of the provider.

I. The department makes payment at the established rates following the receipt of documentation of service delivery.

[8.11.4.15 NMAC - Rp, 8.11.4.15 NMAC, 3/1/2012]

8.11.4.16 ADULT DAY CARE:

A. Any incapacitated adult who has been substantiated for or is at risk of abuse, neglect or exploitation may be eligible for adult day care if adult day care will reduce the likelihood of future abuse, neglect or exploitation.

(1) the adult must meet the institutional medicaid income eligibility.

(2) the adult must have a documented medical incapacity that limits their activities of daily living or significantly limits their instrumental activities of daily living.

B. Adult day care services can only be delivered in a licensed facility that provides structure and supervision.

[8.11.4.16 NMAC - Rp, 8.11.4.16 NMAC, 3/1/2012]

8.11.4.17 DOCUMENTATION:

A. The department or contract provider documents case work activities and maintains records concerning services provided to all individuals receiving adult services.

B. The records created and maintained by the department or by the contract provider on behalf of the department are confidential and are only released as allowed for by law.

[8.11.4.17 NMAC - Rp, 8.11.4.18 NMAC, 3/1/2012]

8.11.4.18 ADMINISTRATIVE REVIEW: The department will provide an informational administrative review of its decision to deny, modify or terminate the adult's services. The aggrieved party must request a review in writing to the adult protective services division director within 15 days of receiving notice of the department's intent to deny, modify or terminate services. The request for a hearing shall be mailed or hand delivered to the specific office of the adult protective division director or to an alternate address, if set forth in the notice.

A. In the written request for review, the aggrieved party shall state the reason(s) why he or she should be eligible to receive the services in question and include any supporting documentation that has not been previously provided or considered by the department.

B. Upon receipt of the aggrieved party's request for the review, the department will reconsider its decision and inform the aggrieved party within 15 business days of the decision to affirm or reverse the denial, modification or termination of the services in question. The department's decision will be in writing. Except for a denial of service, the department will inform the aggrieved party of their right to request an administrative hearing before the secretary in accordance with 8.11.4.19 NMAC for such modification or termination. An administrative review of a denial shall be final and is not appealable unless otherwise provided by law. In cases of modification or termination of services, the aggrieved party may file a written request for an administrative hearing within 10 business days after receipt of the department's letter of decision on the administrative review.

[8.11.4.18 NMAC - N, 3/1/2012]

8.11.4.19 ADMINISTRATIVE HEARING:

A. If services are modified or terminated prior to the expiration date of the service plan and an administrative review has not resolved the matter, the aggrieved party may submit a written appeal of the administrative reviewer's decision to the secretary within 15 calendar days after the decision is issued, in accordance with 8.11.4.18 NMAC.

B. If the aggrieved party timely appeals the reviewer's administrative decision pursuant to 8.11.4.18 NMAC, the office of the secretary shall docket the appeal on the date received and shall provide notice of the appeal within 15 days of its

receipt to the aggrieved party and the adult protective services division director. The secretary may hear the appeal or designate a hearing officer to hear the appeal and make a recommended decision to the secretary.

C. The secretary or the secretary's designee shall prepare a notice of hearing setting forth the date, time and place of the hearing. The notice of hearing shall be sent to the parties by regular mail within 15 days of the

department sending notice of appeal to them. The hearing shall be held no sooner than 15 days and no later than 30 days of the date the notice of hearing is mailed to the parties. Either party may request a continuance of the hearing for good cause. If a hearing is continued it shall be rescheduled at the earliest date and time available to the parties.

[8.11.4.19 NMAC - N, 3/1/2012]

8.11.4.20 PRE-HEARING:

A. Upon receipt of the request for administrative hearing, the hearing officer shall establish an official record which contains all the filed notices, pleadings, briefs, recommendations, correspondence, documents and decisions.

B. No person may discuss the merits of any pending adjudicatory proceedings with the designated hearing officer or the secretary, unless both parties or their representatives are present.

C. The hearing officer may consolidate or join cases if there is commonality of legal issues or parties and if it would expedite final resolution of the cases and would not adversely effect the interests of the parties nor violate the confidentiality provisions of the Adult Protective Services Act. The hearing officer also may join the appeals of an appellant who has two or more appeals pending.

D. Upon request of either party or upon the hearing officer's own motion, the hearing officer may require a pre-hearing order or may schedule a pre-hearing conference at a time and place reasonably convenient to all parties to:

- (1) limit and define issues;
- (2) discuss possible pre-hearing dispositions;
- (3) identify and limit the number of witnesses; and
- (4) discuss such other matters as may aid in the simplification of evidence and disposition of the proceedings.

E. A pre-hearing conference is an informal proceeding and may occur telephonically. The pre-hearing conference may or

may not be recorded, at the discretion of the hearing officer.

F. No offer of settlement made in a pre-hearing conference is admissible as evidence at a later hearing. Stipulation and admissions are binding and may be used as evidence at the hearing. Any stipulation, settlement or consent order reached between the parties must be in writing and must be signed by the hearing officer and the parties, and their attorneys if they are represented by counsel.

G. The hearing officer may dismiss an appeal with prejudice in accordance with the provisions of a settlement agreement approved by the secretary, upon a motion to withdraw the appeal by the aggrieved party or their legal representative at any time before the hearing.

[8.11.4.20 NMAC - N, 3/1/2012]

8.11.4.21 CONDUCT OF THE HEARING:

A. Failure of a party to appear on the date and time set for the hearing, without good cause shown, constitutes default and the hearing officer shall so notify the parties in writing and enter a default judgment against the party.

B. The hearing is open to the public unless the hearing officer directs that the hearing be closed.

C. Any party may appear at the hearing through a licensed attorney, provided the attorney has made a written entry of appearance within a reasonable period of time prior to the hearing date.

D. The hearing officer may clear the room of witnesses not under examination if either party so requests and of any person who is disruptive. The department is entitled to have a representative of APS, in addition to its attorney, in the hearing room during the course of the hearing, even if the person will also testify in the hearing.

E. Oral evidence is to be taken only under oath or affirmation.

F. Generally, except as provided in the following subsection or waived by the party, the order of presentation for the hearing is as follows:

(1) opening of proceedings and taking of appearances by the hearing officer;

(2) disposition of preliminary and pending matters;

(3) opening statement of the department;

- (4) opening statement of the appellant;
- (5) department's case-in-chief;
- (6) appellant's case-in-chief;
- (7) department's rebuttal;
- (8) department's closing argument;
- (9) appellant's closing argument; and
- (10) closing of the proceeding by the hearing officer.

G. The burden of proof in matters arising from denial, reduction or termination of adult services lies with the department, which must prove its case by a preponderance of evidence.

H. The hearing officer shall admit only evidence that is relevant to the issue appealed.

I. The hearing is to be recorded by a sound-recording device under the supervision of the hearing officer. No other recording of the hearing, by whatever means, is permitted without the approval of the hearing officer.

[8.11.4.21 NMAC - N, 3/1/2012]

8.11.4.22 POST-HEARING:

A. The hearing officer may require or permit written closing post-hearing briefs and proposed findings of facts and conclusions of law.

B. The hearing officer shall submit a recommended decision to the secretary as soon as practicable, but no later than 20 working days after the expiration of any time set for the submittal of any last post-hearing proposed findings of facts and conclusions of law, arguments or briefs.

C. As a general rule, the secretary will only consider the hearing officer's recommended decision, post-hearing briefs and proposed finding of fact and conclusions of law. Where circumstances warrant, the secretary may review all or a portion of the record before the hearing officer.

(1) The secretary will not consider any additional evidence or affidavits not in the official record of the hearing or in pleadings not filed in accordance with the hearing officer's scheduling order.

(2) If the secretary disagrees with the findings and conclusions of the hearing officer, the secretary shall issue a separate order which clarifies the findings and conclusions at issue and the reasons a different decision is warranted. An appeal of the final decision by the secretary may be made in accordance with applicable law.

D. The secretary shall render a final determination as soon as practicable but no later than 15 working days after submission of the hearing officer's recommended decision. A copy of the final decision shall be mailed or emailed to each party or attorney of record immediately upon entry of the secretary's final decision. The secretary's decision is final and non-appealable except as otherwise provided by law.

[8.11.4.22 NMAC - N, 3/1/2012]

HISTORY OF 8.11.4 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records Center and Archives under:

SSD 9.0.0, Domestic Violence - Definition and Goal Statement, filed 8/22/86.

SSD 9.1.0, Domestic Violence - General Provisions, filed 8/22/86.

SSD 9.1.0, Domestic Violence - General Provisions, filed 1/29/87.

SSD 9.1.0, Domestic Violence - General Provisions, filed 6/18/87.

SSD 9.1.0, Domestic Violence - General Provisions, filed 3/20/90.

SSD 9.2.0, Domestic Violence - General Guidelines, filed 8/22/86.

SSD 9.3.0, Domestic Violence - Department Responsibilities, filed 8/22/86.

SSD 10.0.0, Social Services - Definition and Goal Statement, filed 8/22/86.

SSD 10.0.0, Social Services - Definition and Goal Statement, filed 6/18/87.

SSD 10.0.0, Social Services - Definition and Goal Statement, filed 9/18/90.

SSD 10.1.0, Social Services for Adults - General Provisions, filed 8/22/86.

SSD 10.1.0, Social Services for Adults - General Provisions, filed 1/29/87.

SSD 10.1.0, Social Services for Adults - General Provisions, filed 6/18/87.

SSD 10.1.0, Social Services for Adults - General Provisions, filed 9/18/90.

SSD 10.2.0, Social Services for Adults - General Guidelines, filed 8/22/86.

SSD 10.2.0, Social Services for Adults - General Guidelines, filed 9/18/90.

SSD Rule #409.0000, Protective Services to Adults, filed 11/10/81.

SSD 10.3.0, Social Services for Adults - Department Responsibilities, filed 8/22/86.

SSD 10.3.0, Social Services for Adults - Department Responsibilities, filed 11/18/87.

SSD 10.3.0, Social Services for Adults - Department Responsibilities, filed 3/28/89.

SSD 10.3.0, Social Services for Adults - Department Responsibilities, filed 9/18/90.

SSD 10.3.0, Social Services for Adults - Department Responsibilities, filed 11/5/91.

SSD 10.4.0, Social Services for Adults - Provide Services, filed 9/18/90.

SSD 11.0.0, Day Care for Handicapped Adults - Definition and Goal Statement, filed 8/22/86.

SSD 11.0.0, Day Care for Handicapped Adults - Definition and Goal Statement, filed 6/18/87.

SSD 11.1.0, Day Care for Handicapped Adults - General Provisions, filed 8/22/86.

SSD 11.1.0, Day Care for Handicapped Adults - General Provisions, filed 6/18/87.

SSD 11.1.0, Day Care for Handicapped Adults - General Provisions, filed 1/13/88.

SSD 11.2.0, Day Care for Handicapped Adults - General Guidelines, filed 8/22/86.

HSSD 74-12, Social Services Manual, filed 3/11/74.

SSD A12.0.0, Home Care Services - Definition and Goal Statement: Home Care, filed 8/22/86.

SSD A12.1.0, Home Care Services - General Provisions: Home Care, filed 8/22/86.

SSD A12.1.0, Home Care Services - General Provisions: Home Care, filed 6/18/87.

SSD A12.1.0, Home Care Services - General Provisions: Home Care, filed 1/13/88.

SSD A12.2.0, Home Care Services - General Guidelines, filed 8/22/86.

SSD A12.2.0, Home Care Services - General Guidelines, filed 1/13/87.

SSD A12.3.0, Home Care Services - Department Responsibilities, filed 8/22/86.

History of Repealed Material:

8.11.4 NMAC, Adult Services, filed 4/14/2003 - Repealed effective, 3/1/2012.

Current with all new rules, amendments, and repeals received by January 2, 2017

N.M. Admin. Code 8.11.4, NM ADC 8.11.4

Code of New Mexico Rules <small>Currentness</small>

Title 8. Social Services

Chapter 11. Adult Protective Services

Part 5. Adult Protective Services Legal (Refs & Annos)

N.M. Admin. Code 8.11.5
8.11.5. ADULT PROTECTIVE SERVICES LEGAL

8.11.5.1 ISSUING AGENCY: Aging and Long-Term Services Department - Adult Protective Services Division.

[8.11.5.1 NMAC - Rp, 8 NMAC 11.5.1, 10/30/08]

8.11.5.2 SCOPE: Protective services employees and general public.

[8.11.5.2 NMAC - Rp, 8 NMAC 11.5.2, 10/30/08]

8.11.5.3 STATUTORY AUTHORITY: Adult Protective Services Act, [Section 27-7-14 et seq. NMSA 1978](#), as amended; Public Health Act, Section 24-1-5L, as amended; Probate Code, [Section 45-5-301 et seq. NMSA 1978](#), as amended; Resident Abuse and Neglect Act, [Section 30-47-1 et seq. NMSA 1978](#), as amended; Aging and Long-Term Services Act, [Section 9-23-1 et seq. NMSA 1978](#), as amended.

[8.11.5.3 NMAC - Rp, 8 NMAC 11.5.3, 10/30/08]

Credits

8.11.5.4 DURATION: Permanent.

[8.11.5.4 NMAC - Rp, 8 NMAC 11.5.4, 10/30/08]

8.11.5.5 EFFECTIVE DATE: 10/30/08, unless a later date is cited at the end of a section.

[8.11.5.5 NMAC - Rp, 8 NMAC 11.5.5, 10/30/08]

8.11.5.6 OBJECTIVE: To establish guidelines for the provision of adult legal services by the department that are consistent with statutory authority and legal mandates.

[8.11.5.6 NMAC - Rp, 8 NMAC 11.5.6, 10/30/08]

8.11.5.7 DEFINITIONS:

A. “Ability to consent” means an adult’s ability to understand and appreciate the nature and consequences of proposed protective services or protective placement, including benefits, risks and alternatives to the proposed services or placement and to make or communicate an informed decision.

B. The “adult protective services (APS) attorney” is the attorney that represents the department in actions pursuant to the Adult Protective Services Act and federal and state constitutional, statutory and case law.

C. “Advance directives” include powers of attorney, living wills and written statements appointing surrogate health care decision makers under the Uniform Health Care Decisions Act (Section 24-7A-1 et seq. NMAC 1978 as amended) and the Mental Health Care Treatment Decisions Act (Section 24-7B-1 et seq. NMAC 1978 as amended).

D. An “affidavit” is a sworn statement of facts and accompanies the petition for an order. It is signed by any person who either has personal knowledge of the facts or has been informed of them and believes them to be true.

E. “Conservator” is a person or entity appointed by the court to manage the property or financial affairs, or both, of an incapacitated adult.

F. “Department” means the aging and long-term services department.

G. “Division” means the adult protective services division of the aging and long-term services department.

H. “Guardian” is a person or entity who has qualified to provide for the care, custody, or control of an incapacitated adult pursuant to court appointment. Examples of a guardian’s responsibilities may include making decisions about where the incapacitated person lives, making health care or treatment decisions for the incapacitated adult, and making decisions relating to the incapacitated adult’s personal safety or care.

I. “Guardianship or conservatorship” is the appointment, by a court, of a person or entity to assume decision making responsibility and to handle the affairs of an individual the court has found to be “incapacitated” as defined in the Probate Code. A guardian and conservator may be the same person or institution or they may be two different persons or entities.

J. An “incapacitated adult” is defined in the Adult Protective Services Act as any adult with a mental, physical or developmental condition that substantially impairs the adult’s ability to provide adequately for the adult’s own care or

protection.

K. A “**surrogate**” is a person legally authorized to act on an adult’s behalf.

L. A “**visitor**” is a court appointed person, who is not a department employee, with no personal interest in the proceedings who is trained or possesses the expertise to evaluate the person’s needs in a guardianship or conservatorship case.

[8.11.5.7 NMAC - Rp, 8 NMAC 11.5.7, 10/30/08]

8.11.5.8 PURPOSE OF ADULT PROTECTIVE LEGAL SERVICES: The purpose of adult protective legal services is to protect incapacitated adults through legal intervention consistent with the adult’s need for services and with the least possible restriction of the adult’s liberty.

[8.11.5.8 NMAC - Rp, 8 NMAC 11.5.8, 10/30/08]

8.11.5.9 ROLE OF THE ADULT PROTECTIVE SERVICES ATTORNEY:

A. The adult protective services attorney provides information, interpretation of law and general assistance to the department in the provision of adult protective services.

B. When the adult protective services attorney, supervisor, and regional manager cannot agree on the most appropriate course of action to protect an incapacitated adult through legal intervention, the issues shall be resolved between the general counsel and adult protective services division director. If they cannot agree, the department’s cabinet secretary is the final arbiter.

[8.11.5.9 NMAC - Rp, 8 NMAC 11.5.9, 10/30/08]

8.11.5.10 GENERAL PROVISIONS:

A. The department complies with the provisions of the Adult Protective Services (APS) Act and the Rules of Civil Procedures and the Rules of Evidence for the district courts.

B. Attorney-client relationship: The primary decision-maker on the case of an incapacitated adult is the caseworker for the purpose of the attorney-client relationship. If a conflict of opinion arises between the caseworker and his supervisor

or a manager within the chain-of-command, the decision-maker becomes the highest ranking person making a determination in the matter up to and including the department's cabinet secretary.

C. Attorney-client privileged communications: Written and verbal communications concerning department business between an APS attorney and a department employee in anticipation of litigation or concerning on-going litigation is privileged. Privileged communication may not be disclosed to a third party without appropriate permission or by order of the court.

D. Confidentiality/access to records: Protective services division records are confidential and can only be inspected pursuant to a valid court order except by those entities specifically entitled to access under the Adult Protective Services Act.

(1) When allowing access to an authorized entity, all attorney-client privileged information and, where protected by law, all identifying information on the referral source on referrals is stricken.

(2) Unless approved by a department attorney, division records are not released pursuant to a subpoena because subpoenas do not reflect a court determination of legitimate interest in the case or the work of the court.

E. Notice requirements: The APS attorney is responsible for sending proceeding notifications to the appropriate persons.

F. Due process: APS attorneys are to provide procedural safeguards for all parties in all adult protective services legal cases filed by the department.

[8.11.5.10 NMAC - Rp, 8 NMAC 11.5.10, 10/30/08]

8.11.5.11 CIVIL OR CRIMINAL COURT: The department may cooperate with parties and courts in criminal and other civil proceedings pursuant to applicable law.

[8.11.5.11 NMAC - Rp, 8 NMAC 11.5.11, 10/30/08]

8.11.5.12 CASES ON TRIBAL LANDS: The department may not provide legal services on Indian tribal land unless allowed under federal law after written authorization is received from tribal leadership (tribal governor or president.)

[8.11.5.12 NMAC - Rp, 8 NMAC 11.5.12, 10/30/08]

8.11.5.13 EMERGENCY PROTECTIVE SERVICES OR PLACEMENT:

A. If an incapacitated adult is in an emergency situation and lacks the ability to consent to receive protective services and no other authorized person is available or willing to consent to protective services, the department may seek an emergency order from the district court for such services.

B. The department files an ex parte order based upon a petition and affidavit.

C. Within 24 hours, excluding weekends and legal holidays, from the time the ex parte order is issued or, if the ex-parte order authorizes forcible entry, from the time the ex-parte order is served upon the incapacitated adult, the department mails or delivers written notice, including a copy of the petition, the ex parte order, and the affidavit for the ex parte order, to:

(1) the adult;

(2) his or her spouse;

(3) adult children or next of kin;

(4) surrogate or guardian, if any; and

(5) the notice informs all parties that a hearing will be held no later than ten days after the date the petition is filed to determine whether the conditions creating the emergency have been removed and whether the adult should be released from the court's order.

D. Limitations of an emergency ex parte order.

(1) The department cannot facilitate a change of residence or hospitalization unless the order requests it and identifies by name and location where the change of residence or hospitalization shall be.

(2) The adult loses no rights except those described in the emergency order.

(3) The court may authorize only those interventions which it finds to be least restrictive of the adult's liberty and civil rights, consistent with his or her welfare and safety.

(4) Neither the department nor its employees can be named as guardian or conservator for the adult, except when the department employee is related by blood or marriage to the incapacitated adult.

E. If the department determines that conditions creating the need for emergency protective services or placement cannot or have not been resolved within the ten day period, renewal of the emergency order may be requested, or discussed at the ten day ex parte hearing.

(1) The department supports the request for renewal with a comprehensive physical, mental and social evaluation of the adult.

(2) The original order can be renewed by the court, once for a maximum period of twenty days.

(3) The adult can petition the court to set aside the emergency order at any time.

F. The adult is present at the hearing unless the court determines it is not possible or not in his best interest because of a threat to the adult's health and safety.

(1) The adult has the right to an attorney, whether or not he is present at the hearing. If the person is indigent, the court must appoint him an attorney no later than the date the petition is filed.

(2) The adult may secure an independent medical, psychological or psychiatric examination and present a report of the independent evaluation or the evaluator's testimony as evidence at the hearing.

[8.11.5.13 NMAC - Rp, 8 NMAC 11.5.13, 10/30/08]

8.11.5.14 CONTINUING NEED FOR PROTECTIVE SERVICES OR PLACEMENT:

A. If the adult continues to need protective services or placement after the renewal order expires, the department is responsible for seeking appointment of a guardian or conservator to assume responsibility for the adult's care or the department must petition for a non-emergency protective placement.

B. The department may file a petition for guardianship/conservatorship simultaneously with the application for renewal for continuity of services during the guardianship/conservatorship notice period of two weeks before the hearing on the merits can be held.

C. If a temporary guardian is appropriate, it may be possible to skip the renewal proceedings and immediately begin the guardianship.

[8.11.5.14 NMAC - Rp, 8 NMAC 11.5.14, 10/30/08]

8.11.5.15 EMERGENCY PLACEMENT BY A LAW ENFORCEMENT OFFICER:

A. The department may contact law enforcement to transport an incapacitated adult to an appropriate facility, without a court order, for an emergency placement.

(1) Law enforcement makes the determination that the emergency placement is required based upon law enforcement's personal observation and judgment in accordance with the Adult Protective Services Act.

(2) The department need not be present for the emergency removal to occur.

(3) The department is available upon request of law enforcement to accompany the officer to:

(a) help assess the adult's situation;

(b) assist in arranging suitable transporting; and

(c) help the officer locate and arrange an appropriate placement.

(4) Absent a court order allowing the caseworker to transport the adult, only a law enforcement officer is authorized to transport or delegate transport of an adult to an appropriate placement.

B. The APS attorney files a petition and affidavit in district court supporting the need for emergency placement within two working days following the emergency placement, and shall mail or deliver written notice to the person(s) specified in Subsection C of 8.11.5.13 NMAC, when the following conditions have been met:

(1) the department is informed of and concurs with the officer's decision to place the adult; and

(2) the department has determined the statutory requirements of the Adult Protective Services Act regarding emergency protective placements by law enforcement officer have been met.

C. A court hearing is held within ten days from the date the petition is filed to review the emergency removal and placement and to consider any department request for an extension or renewal of the original emergency order.

[8.11.5.15 NMAC - Rp, 8 NMAC 11.5.15, 10/30/08]

8.11.5.16 NON-EMERGENCY PROTECTIVE SERVICES/PLACEMENT:

A. The department may petition the court for a non-emergency protective services/placement of an adult. The court may issue a non-emergency protective services/placement order based upon a petition and supporting medical, psychological and social evaluations of the adult.

B. The APS attorney prepares the non-emergency protective services/placement petition based on information provided by the caseworker.

C. The department provides notice that a petition for non-emergency protective services/placement has been filed as follows:

(1) the adult receives written notice, in person, that a petition for non-emergency protective services/placement has been filed;

(2) notice is given at least 14 days prior to the scheduled hearing date;

(3) the adult's attorney and anyone who has physical custody of the adult is given notice; notice is also given to the adult's legal counsel, caretaker, guardian, conservator, surrogate, spouse, adult children or next of kin if such can be located with reasonable diligence.

D. The department conducts or arranges for a comprehensive mental, psychological and social evaluation for the adult in a non-emergency petition.

E. Prior to the expiration of the non-emergency protective services/placement, the department reviews the need for continued protective services/placement, including the need for a guardian or conservator. The department submits a report and recommendations to all persons who were served notice of the original petition, as appropriate.

F. The department may petition the court for an extension of the protective services/placement order for a period not to exceed six months.

[8.11.5.16 NMAC - Rp, 8 NMAC 11.5.16, 10/30/08]

8.11.5.17 GUARDIANSHIP AND CONSERVATORSHIP:

A. The department explores other options such as representative payee, power of attorney, surrogate decision-makers, trusts and living wills, prior to initiating guardianship or conservatorship proceedings.

B. The department recommends limiting the powers of a guardianship or conservatorship to only those areas necessary to accommodate the adult's limitations.

C. The APS attorney completes the guardianship/conservatorship petition based on information provided by the department caseworker.

D. The department provides written notice that a petition has been filed. A copy of the petition and any interim order is served personally on the alleged incapacitated adult and given to all interested parties at least 14 days before the date the hearing is scheduled. Interested parties entitled to notice include:

(1) the alleged incapacitated adult;

(2) the adult's spouse, parents and adult children;

(3) if there are no spouse, parents or adult children, at least one of his closest relatives;

(4) any person serving as the adult's guardian or conservator or who has primary responsibility for the person's care;

(5) any interested person who has filed a request for notice with the court; and

(6) any other person the court indicates.

E. Unless the adult has his own attorney, the court must appoint one to represent him.

F. The department recommends a qualified health care professional to examine the adult prior to the hearing.

G. The department provides the visitor a letter outlining the responsibilities of the visitor as per the Probate Code and the department and requests that the visitor sign a statement of confidentiality.

(1) The department caseworker negotiates a fee for the visitor not to exceed \$60.00 an hour with a limit of six hours per client to perform all the visitor's duties. A higher fee may be paid if approved by the APS attorney.

(2) The department reimburses the visitor's mileage at the DFA rate (see [2.42.2 NMAC](#)).

(3) The visitor must submit an itemized statement for his services prior to payment.

H. Department employees cannot serve as visitors in cases filed by the APS attorney.

[8.11.5.17 NMAC - Rp, 8 NMAC 11.5.17, 10/30/08]

8.11.5.18 TEMPORARY GUARDIANSHIP/CONSERVATORSHIP:

A. In emergency situations the court may appoint a temporary guardian/conservator prior to a hearing on a petition.

B. The department may petition the court to appoint a temporary guardian/conservator.

C. The adult is served within 24 hours of the appointment of a temporary guardian/conservator.

D. If subsequently granted to the temporary guardian/conservator by the court, the authority of any previously court appointed permanent guardian or conservator is suspended.

[8.11.5.18 NMAC - Rp, 8 NMAC 11.5.18, 10/30/08]

8.11.5.19 TERMINATION/REMOVAL OF A GUARDIAN OR CONSERVATOR: The adult, his personal representative, the conservator or guardian or any other interested persons, including the department, can petition the court for removal of the guardian/conservator and request the appointment of a successor, if in the adult's best interest. The court can remove a guardian or conservator, modify, or terminate a guardianship or conservatorship on the basis that the guardian/conservator:

A. is incapacitated;

B. has abused, neglected or exploited the adult;

C. is unable or unwilling to carry out his statutory duties;

D. continued function as guardian/conservator is not in the adult's best interest; or

E. the adult is no longer incapacitated and is capable of managing his person or finances and property.

[8.11.5.19 NMAC - Rp, 8 NMAC 11.5.19, 10/30/08]

8.11.5.20 EXPERT WITNESSES:

A. The caseworker gives the APS attorney advance notice of all witnesses, expert or otherwise, to be called to allow sufficient time to secure subpoenas and service.

B. The department reimburses for expert testimony, time and travel.

(1) The APS attorney approves the expert witness services before they are rendered.

(2) The department has payment guidelines that are followed except in areas of the state where lower rates may be negotiated. APS attorneys may approve higher rates under exceptional circumstances, budget permitting.

[8.11.5.20 NMAC - Rp, 8 NMAC 11.5.20, 10/30/08]

8.11.5.21 PENALTIES. The department may impose, after notice as described in Subsection A of 8.11.5.21 NMAC, civil penalties not to exceed \$10,000 against a facility, provider, or individual who fails to provide documents or certain identifying information, interferes with an investigation, interferes with the provision of voluntary or involuntary protective services, breaches confidentiality, or fails to report abuse, neglect, or exploitation of an incapacitated adult.

A. Upon determination by the adult protective services division that there has been a violation of the particular statutory section of the APS Act that allows for a particular penalty, the department may deliver to the facility, provider, or individual charged with the violation a notice of civil penalty assessment. The notice shall be delivered in person or by certified mail, return receipt requested. The notice shall include:

(1) the name and address of the person or entity to whom the penalty assessment is directed;

(2) the date of the civil penalty assessment;

(3) the basis for the civil penalty assessment;

(4) the amount of the civil penalty assessment;

(5) the date the civil penalty assessment is due for payment;

(6) notice of the right to request an administrative hearing before the department to challenge the civil penalty assessment; and

(7) a statement that the request for administrative hearing must be made in writing to the department's adult protective services division director within ten days of the notification.

B. Unless a hearing is requested, the civil penalty assessment shall be paid to the department in the form of cash, cashier's check, or money order.

C. If a hearing is requested, the department secretary or his designee shall appoint a neutral hearing officer who shall schedule an administrative hearing to determine if the violation occurred and whether a penalty should be assessed. If a penalty shall be assessed, the hearing officer shall determine the amount of the penalty based on the following factors:

(1) the severity of the violation;

(2) the harm resulting from the violation;

(3) the number of times the violation has occurred and whether civil penalties have been assessed previously;

(4) whether the violation is willful or intentional;

(5) whether the facility, provider, or individual charged with the violation was following organizational policy or orders:

(6) whether there was threatened retaliation against a provider or employee for trying to comply with the requirements of the statutory sections of the adult protective services act allowing for penalties.

D. If the hearing officer determines that a facility, provider, or individual has committed the same violation more than once, a minimum of \$1,000 per occurrence shall be assessed.

[8.11.5.21 NMAC - N, 10/30/08]

8.11.5.22 REPRESENTATION:

A. A person or entity may appear as a party on his or their own behalf or by an attorney licensed to practice law in New Mexico.

B. The department may be represented by a duly authorized employee of the department or by an attorney licensed to practice law in New Mexico.

C. An attorney for a party must file an entry of appearance at least ten (10) working days before the commencement of any hearing. The attorney of record for a party shall be deemed to continue to be the attorney of record until written notice of withdrawal of representation is provided to the hearing officer and the parties.

[8.11.5.22 NMAC - N, 10/30/08]

8.11.5.23 REQUEST FOR HEARING: An assessed party may request a hearing before the department. The request for hearing shall be in writing and received by the adult protective services division director no later than ten (10) working days from the date that the assessed party receives the civil penalty assessment. The request for hearing shall include:

A. the name and address of the assessed party;

B. a copy of the civil penalty assessment;

C. a brief statement of the factual or legal bases upon which the assessed party challenges the civil penalty assessment;
and

D. a statement of the relief requested.

[8.11.5.23 NMAC - N, 10/30/08]

8.11.5.24 APPOINTMENT OF HEARING OFFICER: Within five (5) working days of receipt of a timely request for hearing, the adult protective services division director shall appoint a hearing officer and shall send written notice of the appointment to the parties.

[8.11.5.24 NMAC - N, 10/30/08]

8.11.5.25 NOTICE OF HEARING AND TIME LIMITS FOR HOLDING HEARING:

A. Within ten (10) working days of appointment, the hearing officer shall establish the date, time and place of the hearing. The hearing shall be no more than one hundred twenty (120) calendar days from the date of the civil penalty assessment unless the parties agree otherwise.

B. The hearing officer shall issue a notice of hearing at least thirty (30) calendar days before the hearing date, unless the parties agree to a shorter timeframe. The notice shall be served on the parties by certified mail, return receipt requested. At the discretion of the hearing officer, the notice may be served by regular mail or other appropriate means on any other persons or entities that may have an interest in the proceedings.

C. The notice of hearing shall include:

- (1) the name of the assessed party;
- (2) the name and address of the adult protective services division director;
- (3) the time, date, place, and nature of the hearing; and
- (4) a statement of the legal authority under which the hearing is to be held.

8.11.5.25 NMAC - N, 10/30/08]

8.11.5.26 VENUE: Unless the parties agree otherwise, the hearing shall be held in the county where the events allegedly occurred that gave rise to the civil penalty assessment.

[8.11.5.26 NMAC - N, 10/30/08]

8.11.5.27 POWERS AND DUTIES OF THE HEARING OFFICER: The hearing officer shall have the authority to:

- A.** preside over hearings;
- B.** assure that hearings are properly recorded;
- C.** administer oaths and affirmations to the witnesses;

- D.** issue subpoenas and subpoenas *duces tecum*;
- E.** establish procedural schedules;
- F.** rule on motions and procedural requests;
- G.** require parties to attend hearings, pre-hearing conferences and settlement conferences;
- H.** require parties to produce for examination information or witnesses under their control;
- I.** require parties to express their positions on any issues in the proceedings;
- J.** require parties to submit legal briefs on any issues in the proceedings;
- K.** examine witnesses, and permit parties to examine witnesses;
- L.** determine the admissibility of evidence;
- M.** take official notice of any matter that is among the traditional matters of official or administrative notice in accordance with the terms of this rule;
- N.** recess any hearing from time to time;
- O.** regulate the course of the proceedings and the conduct of any participants;
- P.** take any action reasonably necessary to compel discovery or control the conduct of parties or witnesses;
- Q.** issue a recommended decision on the merits of a case, including findings of fact and conclusions of law;
- R.** approve settlements or other pre-hearing or post-hearing dispositions of cases by the parties, subject to final approval by the secretary; and
- S.** take any other action reasonably necessary to conclude the proceedings in a timely and fair manner.

[8.11.5.27 NMAC - N, 10/30/08]

8.11.5.28 APPLICABILITY OF RULES OF CIVIL PROCEDURE AND RULES OF EVIDENCE: Although formal rules of civil procedure and evidence do not apply, the hearing officer may look to the New Mexico rules of civil procedure and the New Mexico rules of evidence for guidance during the course of the proceedings. In addition, the hearing officer's recommended decision and the secretary's final decision must be supported by a residuum of legally competent evidence as would support a verdict in a court of law.

[8.11.5.28 NMAC - N, 10/30/08]

8.11.5.29 COMMUNICATIONS WITH DEPARTMENT AND HEARING OFFICER:

A. No party, representative of a party, or other person shall communicate off the record about the merits of a case with the department or the hearing officer unless the communication is in writing and a copy is provided to all parties to the proceedings.

B. The department's employees and the hearing officer shall not communicate off the record about the merits of a case with any party, representative of a party, or other person unless the communication is in writing and a copy is sent to all parties to the proceedings.

[8.11.5.29 NMAC - N, 10/30/08]

8.11.5.30 PRE-HEARING DISCLOSURES AND DISCOVERY:

A. Upon written request of any party, the hearing officer may require parties to comply with reasonable discovery requests. Oral and written depositions are prohibited except to preserve the testimony of persons who are sick or elderly, or persons who shall not be able to attend the hearing.

B. At least fifteen (15) calendar days before the hearing, each party shall file the following information with the hearing officer and send copies to the other parties:

(1) the name of each witness that the party shall or may call at the hearing;

(2) a summary of the anticipated direct testimony of each witness and, if the testimony includes expert opinions, a list of documents or other information that provides the bases for those opinions;

(3) an estimate of the length of time for the direct testimony of each witness; and

(4) a list of exhibits that shall or may be offered into evidence at the hearing; in addition, each party shall provide the other parties, but not the hearing officer, with copies of all exhibits that are identified on the exhibit list but have not been provided previously.

C. Parties are encouraged to enter into stipulations of fact to expedite the hearing process. Any stipulations must be filed jointly with the hearing officer at least ten (10) working days before the hearing.

[8.11.5.30 NMAC - N, 10/30/08]

8.11.5.31 SUBPOENAS:

A. Pursuant to [Section 28-17-19\(C\) NMSA 1978](#), upon the written request of a party, the hearing officer may issue subpoenas to compel attendance of witnesses or production of records in connection with proceedings before the department.

B. In order to subpoena a person who is not a party to the proceedings, or an agent or representative of a party, the party requesting the subpoena shall tender witness fees and mileage to the person subpoenaed in accordance with the terms of [Rule 1-045 NMRA](#).

C. The hearing officer may condition a subpoena to permit the inspection and copying of records upon the party requesting the subpoena paying the person subpoenaed the reasonable cost of inspection and copying in advance.

[8.11.5.31 NMAC - N, 10/30/08]

8.11.5.32 EVIDENCE AND CONDUCT OF HEARING:

A. Hearings shall be conducted as follows:

(1) all hearings shall be open to the public, unless closing a hearing is necessary to protect the privacy of any person who is entitled to privacy protection under federal or state law;

(2) only relevant and material evidence is admissible at hearings; evidence shall be allowed if it is of a type commonly relied upon by reasonably prudent persons in the conduct of serious affairs;

(3) redundant evidence shall be excluded;

(4) witnesses shall be examined orally, under oath or affirmation; the parties and the hearing officer shall have the right to cross-examine witnesses; and

(5) the hearing officer may take official notice of any matter that is among the traditional matters of official or administrative notice, and may take official notice of any matter that is within the department's specialized knowledge; the hearing officer shall inform the parties of any matters officially noticed, and shall afford the parties an opportunity to contest any such matters.

B. The burden of persuasion at the hearing shall be on the adult protective services division, which must prove its case by a preponderance of the evidence unless the case involves allegations of fraud.

C. At the hearing, the adult protective services division shall present its evidence first. If the assessed party wishes to present evidence, it shall proceed second. Thereafter, only the adult protective services division may present rebuttal evidence. Rebuttal evidence shall be confined to the issues raised in the assessed party's presentation of evidence. Each party shall be given an opportunity to offer a final oral or written argument without additional presentation of evidence.

[8.11.5.32 NMAC - N, 10/30/08]

8.11.5.33 RECORD OF HEARING:

A. Unless a hearing is stenographically recorded and the hearing officer orders otherwise, all hearings shall be recorded electronically by audio or audio-video. Any party desiring a copy of the audio or audio-video shall make a written request to the hearing officer and shall pay the cost of preparing a copy.

B. No later than five working days before a hearing, a party may request that the hearing be stenographically recorded at the cost of the requesting party. The request shall be in writing to the hearing officer and shall certify that the party has hired a certified court reporter and made all necessary arrangements for the court reporter to perform his or her job. In addition, the requesting party shall arrange for the court reporter to deliver two copies of the completed hearing transcript to the hearing officer. A court reporter's transcription becomes official when certified by the hearing officer. The requesting party shall pay the court reporter's fees, including any costs associated with providing the copies of the completed hearing transcript to the hearing officer.

C. Record. The record in a hearing shall consist of the following:

(1) the civil penalty assessment;

- (2) the assessed party's request for hearing;
- (3) the notice of appointment of the hearing officer;
- (4) the notice of hearing;
- (5) all pleadings and orders;
- (6) any written information requested by the hearing officer and provided to him or her by the parties before the hearing;
- (7) all exhibits;
- (8) all stipulations;
- (9) all statement of matters officially noticed by the hearing officer;
- (10) the electronic audio or audio-video recording, or the court reporter's written transcription of the hearing prepared in accordance with this rule;
- (11) the hearing officer's recommended decision;
- (12) any motions for reconsideration and rulings thereon; and
- (13) the secretary's final decision.

[8.11.5.33 NMAC - N, 10/30/08]

8.11.5.34 HEARING OFFICER'S RECOMMENDED DECISION:

A. The hearing officer shall present a written recommended decision to the secretary after the close of the hearing, and shall send copies to the parties. The recommended decision shall be based solely on the record and shall include proposed findings of fact and conclusions of law.

B. Any motions for reconsideration shall be submitted to the hearing officer within five working days from the date of service of the hearing officer's recommended decision. Such motions shall be decided without a hearing unless the hearing officer orders otherwise.

[8.11.5.34 NMAC - N, 10/30/08]

8.11.5.35 SECRETARY'S FINAL DECISION:

A. The secretary shall issue a final written decision within 10 working days of the receipt of the hearing officer's recommended decision or ruling on a motion for reconsideration. Based upon the evidence in the record, the secretary may affirm, reverse or modify the hearing officer's recommended decision as modified by any subsequent rulings of the hearing officer. The secretary's final decision shall inform the parties of their right to seek judicial review.

B. The secretary shall send copies of the final decision to the parties by certified mail, return receipt requested.

C. When the secretary's final decision affirms a civil penalty assessment by the adult protective services division, the assessed party shall pay the civil penalty to the department within thirty (30) calendar days from the date of the decision. Payment shall be in the form of cash, cashier's check or money order.

[8.11.5.35 NMAC - N, 10/30/08]

8.11.5.36 APPEAL: A person who is aggrieved by the secretary's final decision may appeal to the district court in accordance with the provisions of [Section 39-3-1.1 NMSA 1978](#) and [Rule 1-074 NMRA](#). The date of filing of the secretary's final decision starts the time limit for appeal.

[8.11.5.36 NMAC - N, 10/30/08]

8.11.5.37 NO AUTOMATIC STAY PENDING JUDICIAL REVIEW: The filing of a notice of appeal shall not stay the enforcement of the secretary's final decision. Upon a showing of substantial hardship and irreparable harm, the secretary may grant a stay of the final decision pending appeal. The district court may also grant a stay in accordance with the provisions of [Rule 1-074 NMRA](#).

[8.11.5.37 NMAC - N, 10/30/08]

8.11.5.38 ENFORCEMENT OF ORDERS AND PAYMENT IN DEFAULT: Whenever an assessed party is in default of a civil penalty assessment, the adult protective services division may file an action in district court solely for the purpose of entry of judgment and enforcement of the civil penalty. The district court shall accept the civil penalty assessment without

reviewing the basis for it and shall enter an appropriate judgment or order to enforce the civil penalty assessment.

[8.11.5.38 NMAC - N, 10/30/08]

HISTORY OF 8.11.5 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives under:

SSD 10.0.0, Social Services - Definition and Goal Statement, filed 8/22/86.

SSD 10.0.0, Social Services - Definition and Goal Statement, filed 6/18/87.

SSD 10.0.0, Social Services - Definition and Goal Statement, filed 9/18/90.

SSD 10.1.0, Social Services for Adults - General Provisions, filed 8/22/86.

SSD 10.1.0, Social Services for Adults - General Provisions, filed 1/29/87.

SSD 10.1.0, Social Services for Adults - General Provisions, filed 6/18/87.

SSD 10.1.0, Social Services for Adults - General Provisions, filed 9/18/90.

SSD 10.2.0, Social Services for Adults - General Guidelines, filed 8/22/86.

SSD 10.2.0, Social Services for Adults - General Guidelines, filed 9/18/90.

History of Repealed Material: 8 NMAC 11.5, Adult Protective Services-Adult Protective Services Legal (filed 6/16/1997) repealed 10/30/08.

Other History:

SSD 10.0.0, Social Services - Definition and Goal Statement (filed 9/18/90); SSD 10.1.0, Social Services for Adults - General Provisions (filed 9/18/90); and SSD 10.2.0, Social Services for Adults - General Guidelines (filed 9/18/90) were renumbered, reformatted, and replaced by 8 NMAC 11.5, Adult Protective Services-Adult Protective Services Legal, effective 07/01/1997.

8 NMAC 11.5, Adult Protective Services - Adult Protective Services Legal (filed 06/16/1997) was replaced by 8.11.5 NMAC, Adult Protective Services Legal, effective 10/30/08.

Current with all new rules, amendments, and repeals received by January 2, 2017

N.M. Admin. Code 8.11.5, NM ADC 8.11.5

End of Document

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[Code of New Mexico Rules](#) Currentness

[Title 8. Social Services](#)

[Chapter 11. Adult Protective Services](#)

[Part 6. Employee Abuse Registry \(Refs & Annos\)](#)

N.M. Admin. Code 8.11.6
8.11.6. EMPLOYEE ABUSE REGISTRY

8.11.6.1 ISSUING AGENCY: Aging and Long-Term Services Department.

[8.11.6.1 NMAC - N, 4/28/2006]

8.11.6.2 SCOPE: This rule applies to a broad range of New Mexico providers of health care and services and employees of these providers who are not licensed health care professionals or certified nurse aides. This rule requires that providers check with the registry and avoid employing any individual on the registry. This rule further requires listing employees with substantiated registry-referred abuse, neglect or exploitation on the registry, following an opportunity for a hearing. This rule supplements other pre-employment screening requirements currently applicable to health care providers, such as the requirement for criminal history screening of caregivers employed by care providers subject to the Caregiver Criminal History Screening Act, [Sections 29-17-1 through 29-17-5 NMSA 1978](#) and that act's implementing rule, [7.1.9 NMAC](#). It also supplements requirements for pre-employment screening of certified nurse aides applicable to nursing facilities pursuant to [42 CFR Sections 483.75\(e\) and 488.335](#) and [16.12.20 NMAC](#). This rule does not address the consequences of abuse, neglect, or exploitation for which a provider, as distinguished from an employee, is responsible. This rule is meant to compliment department of health rule 7.1.12 NMAC.

[8.11.6.2 NMAC - N, 4/28/2006]

8.11.6.3 STATUTORY AUTHORITY: This rule is adopted pursuant to the terms of [Sections 9-23-6\(E\) and 28-4-6\(B\) NMSA 1978](#), the Adult Protective Services Act, [Sections 27-7-1 through 27-7-31 NMSA 1978](#) and the Employee Abuse Registry Act, [Sections 27-7A-1 through 27-7A-8 NMSA 1978](#).

[8.11.6.3 NMAC - N, 4/28/2006]

Credits

8.11.6.4 DURATION: Permanent.

[8.11.6.4 NMAC - N, 4/28/2006]

8.11.6.5 EFFECTIVE DATE: April 28, 2006, unless a later date is cited at the end of a section.

[8.11.6.5 NMAC - N, 4/28/2006]

8.11.6.6 OBJECTIVE: The objective of this rule is to implement the Employee Abuse Registry Act. The rule is intended to provide guidance as to the rights and responsibilities under the Employee Abuse Registry Act of providers, employees of providers, the department of health and the adult protective services division of the aging and long-term services department, and the public including recipients of care and services from providers.

[8.11.6.6 NMAC - N, 4/28/2006]

8.11.6.7 DEFINITIONS:

A. “Abuse” means:

- (1) knowingly, intentionally or negligently and without justifiable cause inflicting physical pain, injury or mental anguish, and includes sexual abuse and verbal abuse; or
- (2) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person.

B. “Adjudicated” means with respect to a substantiated registry-referred complaint, a final determination by the secretary following a hearing, or by a court, that the employee committed abuse, neglect, or exploitation requiring the listing of the employee on the registry.

C. “APS” means the adult protective services division of the aging and long-term services department.

D. “Behavioral change” means an observable manifestation of psychological, emotional or mental harm, injury, suffering or damage, and includes, but is not limited to, crying, hysterical speech, or disruptions to sleeping, working, eating, speech, nonverbal communications, socially interacting, or other activities which were performed routinely before the harm, injury, suffering, or damage.

E. “Complaint” means a report of adult abuse, neglect or exploitation received by APS that falls within APS’s mandate to investigate.

F. “Custodian” means the person assigned by the secretary of the department of health to maintain the registry in accordance with the Employee Abuse Registry Act.

G. “Department” means the aging and long-term services department.

H. “Direct care” means face-to-face services provided or routine and unsupervised physical or financial access to a recipient of care or services.

I. “Employee” means a person employed by or on contract with a provider, either directly or through a third party arrangement to provide direct care. “Employee” does not include a New Mexico licensed health care professional practicing within the scope of the professional’s license or a certified nurse aide practicing as a certified nurse aide.

J. “Exploitation” means an unjust or improper use of a person’s money or property for another person’s profit or advantage, pecuniary or otherwise.

K. “Investigation” means a systematic fact finding process that has as its goal the gathering of all information relevant to making a determination whether an incident of abuse, neglect or exploitation occurred.

L. “Licensed health care professional” means a person who is required to be licensed, and is licensed, by a New Mexico health care professional licensing board or authority, and the issuance of whose professional license is conditioned upon the successful completion of a post secondary academic course of study resulting in a degree or diploma, including physicians and physician assistants, audiologists, acupuncture practitioners, dentists, registered nurses, licensed practical nurses, chiropractors, pharmacists, podiatrists, certified nurse-midwife, nurse practitioners, occupational therapists, optometrists, respiratory therapists, speech language pathologists, pharmacists, physical therapists, psychologists and psychologist associates, dietitians, nutritionists and social workers.

M. “Manager” means the person designated by the secretary of the department of health to manage the employee abuse registry program pursuant to the Employee Abuse Registry Act.

N. “Mental anguish” means a relatively high degree of mental pain and distress that is more than mere disappointment, anger, resentment or embarrassment, although it may include all of these and includes a mental sensation of extreme or excruciating pain.

O. “Neglect” means, subject to a person’s right to refuse treatment and subject to a provider’s right to exercise sound medical discretion, the failure of an employee to provide basic needs such as clothing, food, shelter, supervision, protection and care for the physical and mental health of a person or failure by a person that may cause physical or psychological harm. Neglect includes the knowing and intentional failure of an employee to reasonably protect a recipient of care or services from nonconsensual, inappropriate or harmful sexual contact, including such contact with another recipient of care or services.

P. “Provider” means an intermediate care facility for the mentally retarded; a rehabilitation facility; a home health agency; a homemaker agency; a home for the aged or disabled; a group home; an adult foster care home; a case management entity that provides services to elderly people or people with developmental disabilities; a corporate guardian; a private residence that provides personal care, adult residential care or natural and surrogate family

services provided to persons with developmental disabilities; an adult daycare center; a boarding home; an adult residential care home; a residential service or habilitation service authorized to be reimbursed by medicaid; any licensed or medicaid-certified entity or any program funded by the aging and long-term services department that provides respite, companion or personal care services; programs funded by the children, youth and families department that provide homemaker or adult daycare services; and any other individual, agency or organization that provides respite care or delivers home- and community-based services to adults or children with developmental disabilities or physical disabilities or to the elderly, but excluding a managed care organization unless the employees of the managed care organization provide respite care, deliver home- and community-based services to adults or children with developmental disabilities or physical disabilities or to the elderly.

Q. “Registry” means the Employee Abuse Registry, an electronic database operated by the department of health that maintains current information on substantiated registry-referred employee abuse, neglect or exploitation, including the names and identifying information of all employees who, during employment with a provider, engaged in a substantiated registry-referred or an adjudicated incident of abuse, neglect or exploitation involving a recipient of care or services from a provider as established by department of health rule 7.1.12 NMAC.

R. “Reporter” means a person who or an entity that reports possible abuse, neglect or exploitation to APS.

S. “Secretary” means the secretary of the department.

T. “Sexual abuse” means the inappropriate touching of a recipient of care or services by an employee for sexual purpose or in a sexual manner, and includes kissing, touching the genitals, buttocks, or breasts, causing the recipient of care or services to touch the employee for sexual purpose, or promoting or observing for sexual purpose any activity or performance involving play, photography, filming or depiction of acts considered pornographic.

U. “Substantiated” means the verification of a complaint based upon a preponderance of reliable evidence obtained from an appropriate investigation of a complaint of abuse, neglect, or exploitation.

V. “Substantiated registry-referred” means a substantiated complaint that satisfies the severity standard for referral of the employee to the registry.

W. “Unsubstantiated” means that that the complaint’s alleged abuse, neglect or exploitation did not or could not have occurred, or there is not a preponderance of reliable evidence to substantiate the complaint, or that there is conflicting evidence that is inconclusive.

X. “Verbal abuse” means profane, threatening, derogatory, or demeaning language, spoken or conveyed by an employee with the intent to cause pain, distress or injury, and which does cause pain, distress or injury as objectively manifested by the recipient of care or services.

8.11.6.8 REGISTRY ESTABLISHED; PROVIDER INQUIRY REQUIRED: The department of health has established and maintains an accurate and complete electronic registry that contains the name, date of birth, address, social security number, and other appropriate identifying information of all persons who, while employed by a provider, have been determined to have engaged in a substantiated registry-referred incident of abuse, neglect or exploitation of a person receiving care or services from a provider.

A. Provider requirement to inquire of registry. A provider, prior to employing or contracting with an employee, shall inquire of the registry whether the individual under consideration for employment or contracting is listed on the registry.

B. Prohibited employment. A provider may not employ or contract with an individual to be an employee if the individual is listed on the registry as having a substantiated registry-referred incident of abuse, neglect or exploitation of a person receiving care or services from a provider.

C. Applicant's identifying information required. In making the inquiry to the registry prior to employing or contracting with an employee, the provider shall use identifying information concerning the individual under consideration for employment or contracting sufficient to reasonably and completely search the registry, including the name, address, date of birth, social security number, and other appropriate identifying information required by the registry.

D. Documentation of inquiry to registry. The provider shall maintain documentation in the employee's personnel or employment records that evidences the fact that the provider made an inquiry to the registry concerning that employee prior to employment. Such documentation must include evidence, based on the response to such inquiry received from the custodian by the provider, that the employee was not listed on the registry as having a substantiated registry-referred incident of abuse, neglect or exploitation.

E. Documentation for other staff. With respect to all employed or contracted individuals providing direct care who are licensed health care professionals or certified nurse aides, the provider shall maintain documentation reflecting the individual's current licensure as a health care professional or current certification as a nurse aide.

F. Consequences of noncompliance. The department of health or other governmental agency having regulatory enforcement authority over a provider may sanction a provider in accordance with applicable law if the provider fails to make an appropriate and timely inquiry of the registry, or fails to maintain evidence of such inquiry, in connection with the hiring or contracting of an employee; or for employing or contracting any person to work as an employee who is listed on the registry. Such sanctions may include a directed plan of correction, civil monetary penalty not to exceed five thousand dollars (\$5000) per instance, or termination or non-renewal of any contract with the department or other governmental agency.

[8.11.6.8 NMAC - N, 4/28/2006]

8.11.6.9 COMPLAINTS: [Section 27-7-30 NMSA 1978](#) requires anyone reasonably suspecting adult abuse, neglect or exploitation to immediately file a complaint with APS. APS has established a centralized intake system for receiving such complaints. A complaint may be made orally or in writing. To the extent possible, a complaint shall include the following

information: the name, age and address of the adult; the name and address of any other person responsible for the adult's care; the nature and extent of the adult's condition; the basis of the reporter's knowledge; and other relevant information.

[8.11.6.9 NMAC - N, 4/28/2006]

8.11.6.10 COMPLAINT PROCESSING: APS will investigate all complaints in accordance with its policies and procedures and render an investigative decision.

A. If a complaint relates to an employee of a provider that is not licensed by or covered under contract by the department of health, APS's investigative decision shall indicate whether the allegations against the employee are:

- (1) unsubstantiated;
- (2) substantiated; or
- (3) substantiated registry-referred.

B. If a complaint relates to an employee of a provider that is licensed by or covered under contract by the department of health, APS shall not make a registry referral determination. APS's investigative decision shall simply indicate whether the allegations against the employee are:

- (1) unsubstantiated; or
- (2) substantiated.

C. Nothing in this section shall be interpreted as precluding APS from contacting any other government agency about a complaint, including but not limited to contacting the department of health and initiating a report, or contacting law enforcement or the attorney general or a district attorney's office for criminal prosecution.

[8.11.6.10 NMAC - N, 4/28/2006]

8.11.6.11 SEVERITY STANDARD: If a complaint relates to an employee of a provider that is not licensed by or covered under contract by the department of health, APS shall make a determination of the severity of substantiated complaints of abuse, neglect or exploitation for the purpose of deciding if the employee is to be referred for placement on the registry. The determination of the severity of the substantiated complaint of abuse, neglect or exploitation is based upon application of the severity standards in this section. A substantiated complaint that satisfies the severity standard in this section is a substantiated registry-referred complaint. A substantiated complaint that does not satisfy the severity standard in this section will not be referred to the registry. Severity is determined by assessing the impact of the substantiated abuse, neglect, or

exploitation on the recipient of care or services, and by assessing the employee for aggravating factors.

A. Abuse. A substantiated complaint of abuse meets the severity standard if:

- (1) the abuse results in, or is a contributing factor to, death;
- (2) the abuse results in the infliction of a significant, identifiable physical injury that reasonably requires or results in medical or behavioral intervention or treatment;
- (3) the abuse results in any injury for which criminal charges are brought against the employee resulting in a plea or conviction;
- (4) the abuse results in the infliction of excruciating pain or pain that endures over a significant time period;
- (5) the abuse causes significant mental anguish as evidenced by the victim's descriptions, or significant behavioral changes;
- (6) the abuse is sexual abuse; or
- (7) the abuse is verbal abuse that causes significant mental anguish, including psychological or emotional damage, and which is evidenced by significant behavioral changes or physical symptoms.

B. Neglect. A substantiated complaint of neglect meets the severity standard if:

- (1) the neglect results in, or is a contributing factor to, death;
- (2) the neglect results in the infliction of a significant, identifiable physical injury that reasonably requires or results in medical or behavioral intervention or treatment;
- (3) the neglect results in any injury for which criminal charges are brought against the employee resulting in a plea or conviction;
- (4) the neglect results in the infliction of excruciating pain or pain that endures over a significant time period; or,
- (5) the neglect causes significant mental anguish as evidenced by the victim's descriptions, or significant behavioral changes.

C. Exploitation. A substantiated complaint of exploitation meets the severity standard where unjust or improper use of the money or property belonging to the recipient of care or services results in:

(1) a single instance of an objectively quantifiable loss, the value of which exceeds the lesser of either:

(a) twenty five dollars (\$25); or,

(b) twenty five percent (25%) of the monthly income available to the recipient of care or services for purchasing personal items or discretionary spending; or

(2) a subjectively substantial loss to the recipient of care or services due to a special attachment to the property, as demonstrated by anger, fear, frustration, depression or behavioral changes caused by the loss.

D. Aggravating factors. A substantiated complaint of abuse, neglect or exploitation meets the severity standard requiring referral of the employee for placement on the registry where:

(1) the employee used alcohol or a controlled substance at or near the time of the substantiated abuse, neglect or exploitation; or

(2) the employee used, brandished or threatened to use, a weapon in connection with the substantiated abuse, neglect or exploitation.

[8.11.6.11 NMAC - N, 4/28/2006]

8.11.6.12 PROVIDER COOPERATION: In accordance with [Section 27-7-19 NMSA 1978](#) and as allowed by law or contract:

A. Access to provider. The provider shall provide APS investigators with immediate physical access to the provider's entire facility or its service delivery sites. The investigators may require such access during any or all shifts.

B. Access to provider records. The provider shall provide APS investigators with immediate access to all information obtained as a result of the provider's own internal investigation of the matters that form the basis of the complaint, including but not limited to written statements, interviews, affidavits, physical items, medical information, electronic and computer data, and photographic information.

C. Interviews. APS investigators shall have a reasonable opportunity to conduct confidential interviews with any person who may have relevant information relating to the complaint, including employees and other staff including licensed health care professionals and certified nurse aides, other licensed health care professionals and other provider staff,

recipients of care or services from the provider and their family members, guardians, health care decision makers and friends.

D. Physical access to recipients of care and services. The provider shall allow APS investigators reasonable access to individuals receiving care or services from the provider when such investigators announce that they are investigating a complaint. Such access may be telephonic or face-to-face.

E. Access to the provider's records, patient trust accounts and patient property. The provider shall provide APS investigators with immediate access to the provider's billing records, patient trust accounts, representative payee records, patient care and medical records, and patient property. In addition the provider must assure access to employee and personnel records, including documentation showing provider inquiry to the registry.

F. Copying. The access required to be provided to APS investigators includes copying paper documents and printing and copying electronic and computer records or data. Copied documents shall be retained in accordance with applicable state retention policies.

G. Consequences of provider's denial of cooperation. The department of health shall administer sanctions for a provider's failure to comply with the Employee Abuse Registry Act, including failure to provide access as required herein to conduct investigations of complaints, and such sanctions include a directed plan of correction, a civil monetary penalty not to exceed five thousand dollars (\$5,000), or such sanctions as are available under applicable contract or licensing provisions. Pursuant to [Section 27-7-30 NMSA 1978](#), any person interfering with an APS investigation is guilty of a misdemeanor.

[8.11.6.12 NMAC - N, 4/28/2006]

8.11.6.13 NOTIFICATION FOLLOWING INVESTIGATION:

A. Notification to provider and employee. If APS determines, following an investigation, that an instance of either substantiated or substantiated registry-referred employee abuse, neglect, or exploitation has occurred, then APS shall promptly notify the employee and the provider.

B. Required information for substantiated registry-referred complaints. The notice to the provider and employee for substantiated registry-referred complaints shall be by certified mail and shall include the following information:

(1) the nature of the abuse, neglect, or exploitation;

(2) the date and time of the occurrence;

(3) whether the abuse, neglect or exploitation was the result of conduct by the employee, the provider or both;

- (4) the right to request a hearing, and the time and manner for requesting a hearing;
- (5) the fact that the substantiated registry-referred findings will be reported to the registry, once the employee has had an opportunity for a hearing; and
- (6) the failure by the employee to request a hearing in writing within thirty (30) calendar days from the date of the notice shall result in the reporting of the substantiated findings to the registry and the provider.

C. Required information for substantiated complaints. The notice to the provider and employee for substantiated complaints may be by mail or by email and shall include the following information:

- (1) the nature of the abuse, neglect, or exploitation;
- (2) the date and time of the occurrence;
- (3) whether the abuse, neglect or exploitation was the result of conduct by the employee, the provider or both;
- (4) the fact that the substantiated complaint was not sufficiently severe to warrant reporting the employee to the registry; and
- (5) the fact that the employee may not request a hearing.

D. Unsubstantiated complaints. Notice of a determination that an investigated complaint is unsubstantiated shall be mailed or emailed to the provider and employee following such determination.

E. APS notification to the department of health. APS shall notify the department of health of substantiated complaints of abuse, neglect and exploitation. APS shall also specifically notify the manager of substantiated registry-referred complaints of abuse, neglect and exploitation.

[8.11.6.13 NMAC - N, 4/28/2006]

8.11.6.14 HEARINGS: Hearings are provided to employees by the department or the department of health, depending upon whether APS or the department of health made the registry referral determination. This section provides rules applicable to hearings held by the department.

A. Request for hearing. An employee may request an evidentiary hearing if the employee is notified that as a result of substantiated registry-referred findings of abuse, neglect, or exploitation the employee will be reported to the registry. The request for hearing shall be made to the department. A provider may not request a hearing pursuant to the Employee Abuse Registry Act. The following applies to hearings properly requested of the department.

(1) The request for a hearing shall be in writing and mailed or delivered to the Aging and Long-Term Services Department, Adult Protective Services Division, 625 Silver SW, Suite 400, Albuquerque, New Mexico 87102; or to an alternative address if set forth in the notice.

(2) The request for hearing shall include a copy of the notice.

(3) The request for hearing must be mailed or hand-delivered no later than thirty (30) calendar days after the date of the notice.

B. Scheduling order. The department, or the hearing officer, shall issue a scheduling order that sets the hearing at a location reasonably convenient for the employee and at a date and time reasonably convenient to the parties. The scheduling order shall establish deadlines for completion of discovery and provide for the filing of a confidentiality order. The hearing shall be scheduled within thirty (30) calendar days following the department's receipt of the request for hearing. Either party may request a continuance of the hearing for good cause. If a hearing is continued it shall be rescheduled at the earliest date and time available to the parties.

C. Hearing officer. The hearing will be conducted before an impartial and independent hearing officer of the department. The hearing officer is not required to be an attorney. Upon appointment, the hearing officer shall establish an official file of the case. The hearing officer shall resolve all prehearing matters, including amendment of the scheduling order, schedule and conduct prehearing conferences, rule on prehearing motions, and resolve discovery disputes. The hearing officer will preside over the hearing and allow each party an opportunity to present its case, and shall resolve all motions, evidentiary issues and other matters as may be necessary. Within thirty (30) calendar days of the conclusion of the hearing the hearing officer will issue a report and recommended decision to the secretary.

D. Parties. The parties to the hearing are APS and the employee. Each party may be represented by an attorney.

E. Confidentiality. The hearing officer shall require the filing of an appropriate signed confidentiality order in which each party agrees to maintain and protect the confidentiality of all individually identifiable health information that is, or may be, used or disclosed at any time during the course of the entire proceeding in accordance with applicable state and federal law and regulations. Refusal or failure to sign an appropriate confidentiality order constitute grounds for denying discovery to the non-signing party, limiting the number and testimony of the non-signing party's witnesses, limiting the admission of evidence that discloses individually identifiable health information, and the imposition of other appropriate measures to limit the scope of disclosure of individually identifiable health information to the non-signing party.

F. Discovery.

(1) Exhibit and witness lists will be exchanged between the parties and provided to the hearing officer prior to the hearing by the parties in accordance with the scheduling order, any prehearing order, or by agreement of the parties. The witness list shall include a summary of the subject matter of the anticipated testimony of each witness listed.

(2) No depositions are allowed except by order of the hearing officer upon a showing that the deposition is necessary to preserve the testimony of persons who are sick or elderly, or persons who will not be able to attend the hearing. Pursuant to provisions in the scheduling order or upon agreement of the parties, and with the consent of the witness if the witness is not employed by the department or another governmental entity, a party may interview witnesses identified by the other party at a reasonable time and in a reasonable manner.

(3) Production of documents. Upon request by the employee, APS shall provide a copy of the investigation to the employee. The parties may request the production of other relevant documents in accordance with the scheduling order or other discovery order.

G. Hearing procedures. The hearing shall be closed to the public. The hearing officer shall conduct the hearing in an efficient and orderly manner that respects the rights of the parties to present their cases. The hearing officer shall maintain proper decorum and shall assure that all participants in the hearing are courteous to one another. The hearing officer is authorized to resolve motions and other disputes before and during the hearing.

(1) Recording. The hearing officer will cause a record to be made of the hearing and retained in the official file. Generally such record is made by use of commonly available audio recording technology. A log of the recording shall be maintained.

(2) Order of presentation at hearing. APS shall present its case, the employee shall present the employee's case, and APS may present its rebuttal case.

(3) Public. The hearing is a closed, nonpublic hearing.

(4) Evidence. The New Mexico Rules of Evidence do not apply, although they may be referred to for guidance as to type of evidence that may be admitted. Generally, evidence shall be admitted if it is of a type relied upon by reasonable persons in the conduct of important affairs. Proffered evidence may be excluded if it is not relevant, or is repetitious or cumulative.

(5) Telephonic testimony. Upon timely notice to the opposing party and the hearing officer and with the approval of the hearing officer, the parties may present witnesses by telephone, or live video.

(6) Recommended decision. The hearing officer shall issue a recommended decision to the secretary within (30) days of the closing of the hearing.

(7) The department shall maintain the official record of the hearing, which shall include the recommendation of the hearing officer and the secretary's adjudicated decision.

(8) The department shall make available to the custodian a copy of the official record of the hearing upon request.

H. Secretary's decision. Within ten (10) business days of receipt of the hearing officer's recommendation, the secretary shall issue a final decision, and promptly provide the parties and the custodian with a copy. If the decision of the secretary finds that the employee was responsible for abuse, neglect or exploitation of sufficient severity for referral to the registry, it shall be the adjudicated decision of abuse, neglect or exploitation.

I. Judicial review. An employee may appeal the secretary's adjudicated decision of abuse, neglect or exploitation to the district court pursuant to the provisions of [Section 39-3-1.1 NMSA 1978](#). The custodian will enter the employee's name into the registry within two (2) working days following receipt of the adjudicated decision. The custodian shall promptly remove the employee from the registry upon the receipt of an order issued by the district court granting a stay pending the outcome of the appeal, or upon the receipt of a district court order reversing the adjudicated decision.

J. Court of Appeals. If the employee seeks review in the court of appeals by writ of certiorari, the employee shall remain on the registry, unless a stay is granted or the court of appeals reverses the district court. If a stay is granted or the court of appeals reverses, notification shall be made to the custodian who shall promptly remove the employee from the registry.

[8.11.6.14 NMAC - N, 4/28/2006]

8.11.6.15 NOTIFICATION TO THE CUSTODIAN: APS shall promptly provide all required employee information to the custodian of the final disposition of complaints of substantiated registry-referred abuse, neglect or exploitation after the occurrence of each of the following.

A. No hearing requested. The employee has not requested an administrative hearing within thirty (30) calendar days after the date of the notice to the employee following an investigation resulting in the determination of substantiated registry-referred abuse, neglect, or exploitation.

B. Adjudication of abuse, neglect or exploitation. The employee has not filed for review in the district court pursuant to the provisions of [Section 39-3-1.1 NMSA 1978](#) after thirty (30) calendar days following the date of the final administrative adjudication decision of employee abuse, neglect or exploitation of sufficient severity for registry referral.

C. Judicial decision. Upon the receipt by APS of a district court order or decision sustaining the administrative adjudication decision of abuse, neglect or exploitation of sufficient severity for registry referral, if an employee seeks judicial review in the district court.

D. Court of Appeals. If the employee seeks review in the court of appeals by writ of certiorari, the employee shall remain on the registry, unless a stay is granted or the court of appeals reverses the district court. If a stay is granted or

the court of appeals reverses, then notification shall be made to the custodian who shall promptly remove the employee from the registry.

[8.11.6.15 NMAC - N, 4/28/2006]

8.11.6.16 ENTRY ON THE REGISTRY: The custodian shall provide the employee and the provider for whom the employee worked with notice of the employee's listing on the registry. The following employees will be listed on the registry by the custodian.

A. No hearing requested. Any employee determined to have committed substantiated registry-referred abuse, neglect or exploitation who does not request an administrative hearing within thirty (30) calendar days after the date of the notice to the employee.

B. Adjudicated decision. Any employee who, after thirty (30) calendar days following the date of an adjudicated decision of abuse, neglect or exploitation, has not filed for review in the district court pursuant to the provisions of [Section 39-3-1.1 NMSA 1978](#).

C. Judicial decision. Any employee for whom a district court has entered an order or decision sustaining an administrative adjudication of abuse, neglect or exploitation.

D. Court of Appeals. Any employee who seeks review in the court of appeals by writ of certiorari shall remain listed on the registry, unless a stay is granted pending the outcome of the case, or the court of appeals reverses the district court. If a stay is granted or the court of appeals reverses the district court, then the custodian shall promptly remove the employee from the registry.

[8.11.6.16 NMAC - N, 4/28/2006]

8.11.6.17 REMOVAL FROM THE REGISTRY: After a period of three years from the effective date of placement on the registry, an individual on the registry may petition the department of health for removal from the registry in accordance with the terms of department of health rule 7.1.12 NMAC.

[8.11.6.17 NMAC - N, 4/28/2006]

8.11.6.18 CONFIDENTIALITY: The department complies with all state and federal confidentiality requirements regarding information obtained in connection with the operation of the Employee Abuse Registry program, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

A. Confidentiality of information. Information obtained by APS involving incidents or situations of suspected abuse,

neglect or exploitation is confidential, and is not subject to public inspection until completion of all investigations and hearings, and then only to the extent specifically permitted by law and only such information that does not identify individuals who are receiving care or services from providers.

B. Unsubstantiated complaints. Complaints of suspected abuse, neglect or exploitation obtained by APS that are not substantiated following investigation are not public information, and are not subject to public inspection.

C. Substantiated complaints. Complaints of suspected abuse, neglect or exploitation obtained by APS that are substantiated following investigation are subject to public inspection only to the extent permitted by law and the disclosure may not include any identifying information about an individual who is receiving health care services from a provider.

D. Permitted disclosures. Nothing herein shall restrict an appropriate disclosure of information to the centers for medicare and medicaid services; nor shall any provision herein restrict disclosures to law enforcement officials, including the attorney general, district attorneys and courts, in accordance with the Adult Protective Services Act and the Resident Abuse and Neglect Act or other law.

[8.11.6.18 NMAC - N, 4/28/2006]

8.11.6.19 CONFLICTS WITH 7.1.12 NMAC: To the extent any provisions of this rule conflict with department of health rule 7.1.12 NMAC, department employees shall be governed by the terms of this rule.

[8.11.6.19 NMAC - N, 4/28/2006]

HISTORY OF 8.11.6 NMAC: [Reserved]

Current with all new rules, amendments, and repeals received by January 2, 2017

N.M. Admin. Code 8.11.6, NM ADC 8.11.6

End of Document

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